

MICHIGAN SUPREME COURT



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SEXUAL HARASSMENT CLAIM AGAINST DETROIT BOARD OF EDUCATION TO BE HEARD BY MICHIGAN SUPREME COURT

LANSING, MI, May 5, 2004 – A sexual harassment claim against the Detroit Board of Education will come before the Michigan Supreme Court next week for oral argument.

In *Corley v. Detroit Board of Education*, the plaintiff claims she was not rehired for a part-time position at the Golightly Vocational Center after her supervisor, who had had a romantic relationship with the plaintiff for several years, broke off that relationship and began dating, and eventually married, another woman who was also a Board of Education employee. The plaintiff claims that her supervisor and the other woman harassed and intimidated her, and that she was not rehired because of her prior relationship with the supervisor. The Board of Education argues that the couple's conduct is not "of a sexual nature" and therefore does not support the plaintiff's sexual harassment claim.

The Court will also hear two criminal cases, *People v. Phillips* and *People v. Nickens*. In each case, the defendant was initially charged with first-degree criminal sexual conduct, but was convicted of a lesser offense. At issue is whether the defendants can be convicted of a lesser offense with which they were not formally charged.

Also before the Court is *Boddy Construction Company, Inc. v. Michigan Department of Transportation*, a contract dispute involving the construction company's claims for compensation. The Court will also hear arguments in *Sotelo, et al. v. Township of Grant*, in which the plaintiffs challenge the township's refusal to approve a division of their land.

The May 13 hearing concludes the Supreme Court's regular schedule of oral arguments, which the Court hears from October through May. The Court may hear cases at other times as the need arises.

Court will be held on **Thursday, May 13**. Court will convene at **9:30 a.m.**

(Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys. Briefs in these cases may be viewed on the Michigan Supreme Court's website at http://www.courts.michigan.gov/supremecourt/Clerk/msc_orals.htm.)

Thursday, May 13
Morning session only

PEOPLE v. PHILLIPS (case no. 122021)

Prosecuting attorney: Larry L. Roberts/(313) 224-7011

Attorney for defendant Benjamin A. Phillips: Susan M. Meinberg/(313) 256-9833

Trial court: Wayne County Circuit Court

At issue: The defendant was accused of first sexually assaulting the complainant and then choking her. He was charged with first degree criminal sexual conduct. May he be found guilty of the uncharged offense of assault with intent to do great bodily harm less than murder?

Background: Benjamin A. Phillips was charged with two counts of first-degree criminal sexual conduct. The complainant claimed that Phillips first sexually assaulted her and then choked her. During trial, evidence was presented to show that the complainant was not truthful. After the parties had presented their evidence, the prosecutor asked the judge to consider finding Phillips guilty of assault with intent to do great bodily harm less than murder. In making her ruling, the circuit judge stated that she did not believe that “the defendant engaged in any kind of sexual penetration.” The judge went on to find that Phillips had a fight with the complainant and tried to strangle her. As a result, the judge concluded, Phillips was guilty of assault with intent to do great bodily harm less than murder. The Court of Appeals affirmed the conviction. Phillips appeals. He argues that his defense was designed only to address the criminal sexual conduct charge. Phillips contends that, by allowing the prosecutor to amend the charge after the evidence was presented, the court deprived Phillips of due process of law.

PEOPLE v. NICKENS (case no. 123992)

Prosecuting attorney: Timothy A. Baughman/(313) 224-5792

Attorney for defendant Dennis L. Nickens: Cyril C. Pessina/(313) 839-7441

Trial court: Wayne County Circuit Court

At issue: In a case in which the defendant was charged with first-degree criminal sexual conduct – a crime involving sexual penetration – was it improper to instruct the jury on the crime of assault with intent to commit criminal sexual conduct involving sexual penetration?

Background: Dennis L. Nickens was accused of sexually assaulting a long-time girlfriend, with whom he had fathered two children. He was formally charged with a sexual penetration crime – first-degree criminal sexual conduct. At trial, there was a question whether Nickens had actually accomplished sexual penetration. The Wayne County Circuit Court therefore decided, over defense counsel’s objection, to instruct the jury on a less serious offense with which Nickens had not been formally charged, namely, assault with intent to sexually penetrate. Nickens was acquitted by the jury of the original charged crime, but convicted of the assault offense. The Court of Appeals reversed Nickens’ conviction, ruling that the trial court should not have given the assault with intent jury instruction because the crime of assault with intent does not share the same crime elements with the originally charged sexual penetration crime. The prosecutor appeals.

CORLEY v. DETROIT BOARD OF EDUCATION (case no. 119773)

Attorney for plaintiff Patricia Myra Corley: Ernest L. Jarrett/(313) 964-2002

Attorney for defendants Detroit Board of Education and Joseph Smith: Christine D. Oldani/(313) 983-4796

Trial court: Wayne County Circuit Court

At issue: Was there sufficient evidence that plaintiff was subjected to “conduct or communications of sexual nature” to support her claims of sexual harassment?

Background: Plaintiff Patricia Corley had a full-time day position with the Detroit School Board as a high school counselor, but also worked part-time for the Board as a counselor at the Golightly Vocational Center’s night-time adult education program. In 1991, Corley became romantically involved with her supervisor, defendant Joseph Smith. In 1995, Smith ended the relationship and dated another Board employee, Barbara Finch, whom he later married. Corley claims that, after her romance with Smith ended, Smith and Finch began treating her badly; Smith allegedly threatened to fire Corley if she made any difficulties about his ending their relationship or his new relationship with Finch. In the fall of 1996, Corley learned that her part-time position was not renewed, although she continued in her full-time day position. Corley maintained that she was not rehired because of her relationship with Smith. She sued under Michigan’s Elliott-Larsen Civil Rights Act, claiming in part that she suffered sexual discrimination and sexual harassment. The Act defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature....” The Wayne County Circuit Court dismissed Corley’s claims, but the Court of Appeals partially reversed, concluding that the case could proceed on Corley’s sexual harassment claim. The defendants appeal. They argue that Smith’s and Finch’s conduct and communications were not “of a sexual nature” and so cannot support a claim for sexual harassment.

BODDY CONSTRUCTION COMPANY, INC. v. MICHIGAN DEPARTMENT OF TRANSPORTATION (case no. 123833)

Attorney for plaintiff Boddy Construction Company, Inc.: Lawrence M. Scott/(586) 726-1000

Attorney for defendant Michigan Department of Transportation: Kathleen A. Gleeson/(517) 373-3445

Trial court: Court of Claims

At issue: Boddy Construction Company and the Michigan Department of Transportation (MDOT) entered into a contract for highway construction. The contract provided in part that Boddy was to notify MDOT in writing before beginning extra work for which the company would claim additional compensation. Boddy did not comply with the notice provision, but claims that MDOT waived the provision through its conduct. Did Boddy Construction present sufficient evidence to support its argument that MDOT waived the provision?

Background: In 1995, Boddy Construction Company was awarded the contract for the reconstruction and widening of 2.2 miles of the I-94 business loop in Marysville, St. Clair County. The project was completed in 1996 and Boddy was paid approximately \$7,328,000. Boddy claims that it did extra work for which it is entitled to additional compensation. The contract under which Boddy worked included a Notice of Claim provision that required a contractor to notify the Michigan Department of Transportation (MDOT) in writing before beginning additional work. Boddy did not comply with the notice provision, but claims that MDOT waived strict compliance with the notice provision. Boddy offered some evidence, including testimony from an MDOT engineer, that the written notice procedure was not always followed. The Court of Claims dismissed Boddy’s claims, finding that there was no indication that MDOT had not waived the Notice of Claim requirement. Moreover, Boddy could not

establish that it did extra work that entitled it to additional compensation, the court concluded. But the Court of Appeals reversed, stating that the Department had waived strict compliance with the notice provision and that a trial was required to resolve factual questions regarding Boddy's extra compensation claims. The Department appeals.

SOTELO, et al. v. TOWNSHIP OF GRANT (case no. 123430)

Attorney for plaintiffs Jeffrey Sotelo, Susan Sotelo, Walter J. Vander Wall, individually and as Trustee, and Phyllis A. Vander Wall, individually and as Trustee: Joel W. Baar/(616) 531-7711

Attorney for defendant Township of Grant: Clifford H. Bloom/(616) 459-1171

Attorney for amicus curiae Michigan Department of Consumer and Industry Services: James E. Riley/(517) 373-7540

Trial court: 27th Circuit Court (Newaygo County)

At issue: How are property division rights calculated under the Land Division Act when a property owner purchases adjoining property?

Background: Plaintiffs Jeffrey and Susan Sotelo and Walter and Phyllis Vander Wall owned 2.35 acres of land that adjoined a 7.63 acre parcel of land. Under the Land Division Act ("LDA"), parcels of land less than 10 acres in size may be divided into four parcels without going through the platting process. Plaintiffs' property could only be divided into two, however, because of the Township of Grant's one-acre minimum lot size restriction. Plaintiffs purchased 3.25 acres of land from the adjoining property owner, making their parcel 5.6 acres. The remainder of the adjoining parcel was divided into four smaller ones. Plaintiffs then divided their 5.6 acres into four parts. The Township refused to approve the division of the plaintiffs' land. The Township contended that the 7.63 acre adjoining parcel was a "parent parcel" under the LDA, and that the division of that parcel into four smaller ones "used up" the maximum number of divisions available under the LDA. The circuit court agreed with the Township, but the Court of Appeals reversed and allowed the plaintiffs to divide their 5.6 acres into four parcels. The Township appeals.

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